

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RONALD L. BREKKE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. C14-1354-JCC

ORDER

This matter comes before the Court on Petitioner's motion for relief from a final judgment (Dkt. No. 33) and motion for an order to show cause (Dkt. No. 34). It appears that Petitioner's motion for relief from a final judgment (Dkt. No. 33) seeks to offer the following contract to the Government—Petitioner will pay the Government \$300,000,000, payable May 2049, if it releases Petitioner from his incarceration. (*See* Dkt. No. 33.) Included in Petitioner's motion is a contract clause that purports to make the Government's acceptance of the contract automatic if it does not respond within 10 days. (*See id.*) Petitioner's motion for an order to show cause (Dkt. No. 34), filed 42 days after his first motion, asks the Court to issue an order to show cause why Petitioner is still in custody, given that the Government did not respond to his offer within 10 days. (*See* Dkt. No. 34.)

Petitioner's first motion is a Federal Rule of Civil Procedure 60(b)(5) motion, premised on the theory that Petitioner's judgment has been satisfied by his contract offer (and its

1 impending acceptance). (*See* Dkt. No. 33.) Regardless of whether Petitioner's motion is an
2 improper Federal Rule of Civil Procedure 60(b) motion,¹ Petitioner cannot use a contract *offer* to
3 argue that a judgment has been satisfied. And he cannot fix this shortcoming by embedding in
4 his offer that the Government's failure to respond results in its acceptance. *See, e.g., Saluteen-*
5 *Maschersky v. Countrywide Funding Corp.*, 22 P.3d 804, 808 (Wash. Ct. App. 2001). Finally,
6 although this Rule 60(b) motion was filed in a civil case, it is really an attempt by Petitioner to
7 overturn his criminal conviction. Rule 60(b) motions provide relief from only civil judgments,
8 not criminal convictions and sentences. *See, e.g., United States v. Tate*, 523 F. Supp. 2d 165, 168
9 (D. Conn. 2007).

10 Therefore, Petitioner's motion for relief from a final judgment (Dkt. No. 33) and motion
11 for an order to show cause (Dkt. No. 34) are DENIED.

12 DATED this 9th day of July 2019.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

23 ¹ Petitioner's underlying case is a habeas petition filed in September 2014. (Dkt. No. 1.) A
24 defendant is generally limited to one federal habeas petition and is generally "bar[red] from
25 filing a second or successive petition without authorization from the appropriate court of
26 appeals." *Ybarra v. Filson*, 869 F.3d 1016, 1022 (9th Cir. 2017). A defendant cannot evade this
bar by simply calling his petition a Federal Rule of Civil Procedure 60(b) motion. *Id.* A Rule
60(b) motion that raises an entirely new claim, or attacks the Court's resolution of a claim on the
merits, is an improper Rule 60(b) motion. *Id.*